

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**JOSEPH JAMIESON,**  
**Plaintiff,**

**V.**

**ULLI KLEMM, et al.,  
Defendants.**

**C.A. No. 19-284 Erie**

**District Judge Susan Paradise Baxter**  
**Magistrate Judge Richard A. Lanzillo**

## MEMORANDUM ORDER

Plaintiff Joseph Jamieson, an inmate currently incarcerated at the State Correctional Institution at Albion, Pennsylvania (“SCI-Albion”) initiated this civil rights action on October 2, 2019, by filing a motion to proceed *in forma pauperis* (“ifp motion”), accompanied by a *pro se* complaint against Defendants Ulli Klemm, Bureau of Treatment Services, and John E. Wetzel, Secretary of the Pennsylvania Department of Corrections. This matter was assigned to United States Magistrate Judge Richard A. Lanzillo for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates, and was subsequently reassigned to the undersigned, as presiding judge, with Judge Lanzillo remaining as referred Magistrate Judge for all pretrial proceedings.

On January 31, 2020, Defendants filed a motion to dismiss this case for Plaintiff's failure to answer any questions at his deposition that was held on January 31, 2020. [ECF No. 23]. On August 12, 2020, Judge Lanzillo issued a Report and Recommendation ("R&R") recommending that Defendants' motion to dismiss be denied, but that a monetary sanction be imposed against Plaintiff in the amount of \$500.00 due to his misconduct. [ECF No. 38]. Plaintiff has filed

objections to the R&R [ECF No. 46] explaining, in essence, that he didn't respond to questions at his deposition because he had a pending motion to appoint counsel that had not yet been ruled upon and was uncomfortable answering questions without an attorney present. Plaintiff's motion to appoint has since been denied.

After de novo review of the complaint and documents in this case, together with the report and recommendation, the following order is entered:

AND NOW, this 29th day of September, 2020;

IT IS HEREBY ORDERED that Defendants' motion to dismiss for Plaintiff's refusal to testify at his deposition is DENIED. In this regard, the Court adopts the R&R [ECF No. 38] as the opinion of the Court; however, in light of Plaintiff's objections, the Court declines to adopt the Magistrate's Judge's further recommendation that a monetary sanction of \$500.00 be imposed against Plaintiff for his refusal to answer questions at his deposition.

Rather, it is FURTHER ORDERED that Defendants shall have the right to reschedule Plaintiff's deposition and, if Defendants so choose, Plaintiff shall appear and answer questions asked by Defendants' counsel at the rescheduled deposition, with or without the presence of his own attorney, or suffer dismissal of this case upon Defendants' filing of a notice with the Court verifying Plaintiff's continued refusal to testify.

  
SUSAN PARADISE BAXTER  
United States District Judge

cc: The Honorable Richard A. Lanzillo  
U.S. Magistrate Judge

all parties of record